



LOUISIANA DEPARTMENT OF INSURANCE
J. ROBERT WOOLEY, COMMISSIONER

October 3, 2005

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State of Louisiana Department of Insurance
Advisory Letter No. 05-01

retention, records, solvency, audit, fraud, investigation
LRS 22 Generally and LRS 22::39, 193.1, 1203, 1205, 1309, 2092.12, 3011

TO: All Entities Regulated by the Department of Insurance

RE: RECORDS DAMAGED AS A RESULT OF WATER, CONTAMINANTS AND/OR FIRE

The Commissioner of Insurance recognizes that water, contaminants and fire damage records of regulated entities and that the resulting condition of the records poses hazardous conditions that threaten the health, safety and welfare of the public.

THEREFORE, the Commissioner of Insurance advises each regulated entity whose records were damaged as a result of water, contaminants and/or fire to dispose of records that pose hazardous conditions that threaten the health, safety and welfare of the public as a result of that damage.

The regulated entity should have *in its own business records* thereafter an affidavit as described below. The recommended retention period for the affidavit is the same as the retention period for records which are described in the affidavit. The affidavit is not to be filed with the Department of Insurance but should be available if requested by the Commissioner. Louisiana notaries are required to comply with the provisions of LRS 35:12 found at www.legis.state.la.us when notarizing documents.

About the Affidavit That Records Were Damaged as a Result of Water, Contaminants and/or Fire

- Affidavit executed by at least one of the following persons of majority age:
 - person who actually viewed damaged records and/or site that housed the records and who can attest to the following (see substance of the affidavit below):
 - representative of regulated entity whose records were damaged and who can attest to the following (see substance of the affidavit below):
- Substance of the affidavit includes an attestation (1) to the damage to the records, (2) that water, contaminants and/or fire damaged the records, (3) that the condition of the records posed hazardous conditions that threatened the health, safety and welfare of the public, (4) that the disposal process protects the privacy interests of the insureds listed in the records, (5) to a description of the records damaged, (6) that the entity that disposed of the records did so as the agent of the regulated entity, and (7) that records which are otherwise available for inspection and/or audit purposes by the Department of Insurance shall be retained for review by the Department of Insurance. See statement hereinbelow about exhibit for affidavit.
- For the limited purpose of documentation for inspection and/or audit of records by the Department of Insurance, see "Attachment A. Affidavit—Records Were Damaged as a Result of Water, Contaminants and/or Fire" which may be used by regulated entities.

About Exhibit for Affidavit that Records Were Damaged as a Result of Water,
Contaminants and/or Fire

- Corroborating documentation, if available
- Visual evidence (i.e., pictures of affected records and/or site that housed the records)
- Recovery contractor documentation preferred (see inclusive list for recovery contractors at <http://www.sec.state.la.us/recovery/index.htm>)

The Commissioner further advises the following:

- Regulated entities should secure certification from the entity that disposes of the records that the records were properly disposed of to ensure the privacy of the insured listed in the records.
- Regulated entities should remember that the entity that disposes of the records is the agent of the regulated entity.
- Records of regulated entities that are otherwise available for inspection and/or audit purposes by the Department of Insurance shall be retained by the regulated entity for review by the Department of Insurance.



J. Robert Wooley
Commissioner

For Use by Entities Regulated by the Louisiana Department of Insurance. Form Affidavit-PRINT except where signatures required.

PART 1. Entity. Complete all Applicable Information in Part 1.

PART 2. Attestation (continued). Complete all information in Part 2.

	actually viewed damaged records and/or site that housed the records and can attest to the following:
	am a representative of the regulated entity whose records were damaged and can attest to the following:

THAT the damage to records occurred;
THAT water, contaminants and/or fire damaged records;
THAT the condition of the records posed hazardous conditions and threatened the health, safety and welfare of the public;
THAT the disposal process the regulated entity approved protects the privacy interests of the insureds listed in the records;
THAT the entity that disposed of the records did so as the agent of the regulated entity;
THAT records which are otherwise available for inspection and/or audit purposes by the Department of Insurance shall be retained for review by the Department of Insurance.

PART 3. Signatures and Notary. Complete all information in Part 3. Under LRS 35:12, in pertinent part, use "Christian names and surnames of the parties in full and not their initial letters alone or the full names of the parties and not their initial letters alone, together with the permanent mailing addresses of the parties, and... print or type the full names of the witnesses and of [notaries] under their respective signatures....[A] full name or a name in full shall include at least one given name and other initials in addition to the surname. It may be any combination of first name and middle initial or initials, if any, and the surname; or the first initial and at least one middle name and the surname; or the complete first and middle name or names and the surname. The notary shall type, print, or stamp his or her name as it appears on his or her commission."

Witnesses

BY: Affiant (Representative of Regulated Entity)

Representative of Regulated Entity (Same as Part 1A hereinabove)	Date
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Print Name: _____ Print Name: _____

Permanent Physical Address: _____

Print Name: _____

Subscribed and sworn to before me this _____ day of _____, 200_____

NOTARY SEAL

NOTARY PUBLIC
Bar Roll or Notary Number _____
Printed Name of Notary _____
My Commission Expires _____

(Rev. 100305)

Retain Affidavit in files of regulated entity for the same retention period established for records which are described in this Affidavit.

If power of attorney used, a copy of the power of attorney must accompany the affidavit.